



REPUBLIC OF KENYA



**In re Estate of M'Naituri M'Rutere alias Naituri s/o Rutere (Succession Cause 8 of 2020) [2024] KEMC 119 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEMC 119 (KLR)

**REPUBLIC OF KENYA  
IN THE GITHONGO LAW COURTS  
SUCCESSION CAUSE 8 OF 2020**

**AT SITATI, SPM**

**JUNE 14, 2024**

**IN THE MATTER OF THE ESTATE OF M'NAITURI  
M'RUTERE ALIAS NAITURI S/O RUTERE**

**BETWEEN**

**JULIUS MWITI M'RINGERA ..... APPLICANT**

**AND**

**FESTUS MURIUNGI NAITURI ..... PETITIONER**

**RULING**

1. By a Chamber Summons application dated 31st January, 2024 the Applicant herein prayed for:
  1. (spent).
  2. That the Honourable Court do review and/or vary, set aside and orders issued on 29<sup>th</sup> January, 2024 dismissing the application dated 13/12/2023 for non-attendance.
2. The application relied on the following grounds:
  1. That the application was coming up for inter partes hearing on 29/01/2024.
  3. That the Counsel on record was involved in other matters at Meru Law Courts Meru ELC No.29 Of 2020 which was coming up for hearing before Hon. Justice Yano.
  3. That it is in the best interest that the parties be heard and the matter be dispensed with.
  4. That the mistake of the Counsel should not be revisited on the litigant.
4. The application also relied on the supporting affidavit of the application. The firm of Joshua Mwitia Law Advocates represented the applicant.



5. The Respondent/Petitioner opposed the application vide a Replying Affidavit dated 6<sup>th</sup> February, 2024. In summary, the respondent deposed that:
  1. The application lacked merit.
  2. The application which was dismissed could not stand on substance because the applicant himself failed to attend court.
  3. Even on the merit on the now dismissed application, the respondent had shown that the applicant therein could not succeed because the Applicant was pursuing a similar relief to obtain ownership of LR. Laikipia/daiga/umande Block 4/(nyarigino) 924 vide Nanyuki Law Courts ELC Case No. E007/2022 which is the same question that was being raised in the dismissed application.
6. The Applicant did not file a reply to the respondent's Replying Affidavit and the parties opted not to file any written submissions.

### **Issue For Determination**

7. The only issue for determination is whether or not the application for reinstatement was merited or not.

### **Determination**

8. From the court record of 29/01/2024 neither the Applicant nor his advocate attended the Inter Partes Hearing on 29<sup>th</sup> January, 2024 which was a date that the applicant and his advocate had taken and ordered to serve the respondent.
9. In the present application for reinstatement, only the advocate has endeavoured to explain his non-attendance but the Applicant himself has not offered any explanation as to why he was not in court as directed for Inter-Partes hearing. The failure to explain the applicant's whereabouts on 29<sup>th</sup> January, 2024 leaves a lot to be desired and militates against the good faith on his part and is consistent with his initial non-attendance in the main suit which was dismissed for non-attendance way back in 2021.
10. Even on merit and on the substance of the main claim, the applicant has not rebutted the averment in the replying affidavit by the respondent filed against the applicants' now dismissed application to the effect that the same subject matter between the same parties is LR. Laikipia/daiga/umande Block 4/(Nyarigino) 924 which is now pending hearing and determination vide Nanyuki Law Courts ELC Case No. E007/2022. Without a rebuttal on this issue, it is the finding of this Honourable Court that even on the merits and by the application of the rule in section 6 of the *Civil Procedure Act*, the now dismissed suit was itself unsustainable. In *Peter Njuguna Gitau v Daniel Kiprono Kiptum & 3 others* [2022] eKLR (LA. Omolo J.) the superior court had this to say:
  58. The 2<sup>nd</sup> Defendant/Applicant has made reference to Section 6 of the *Civil Procedure Act*, stating that it is the basis for seeking orders of stay. It is worded thus:
    6. Stay of suit.
11. No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.



59. The above section is a bar to parallel prosecution of cases in two fora of equal jurisdiction...”
12. At paragraph 62 of the foregoing judgement, the learned Judge went on to state:
62. In *Republic Vs Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya* [2020] eKLR the court discussed this issue as follows:
- “Before the Court or Judge for determination.”
13. The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of Courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before Courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of *res sub judice* must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before Courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”
14. If the now dismissed suit is reinstated as prayed by the applicant herein, there is a real chance that the 2 courts of Githongo and Nanyuki which have concurrent jurisdiction might issue conflicting decisions over the said land which was being tussled over by the same parties in the 2 suits and this is a foreseeable possibility which section 6 of the *Civil Procedure Act* prohibits. The applicant herein still had a right of access to justice in the Nanyuki case and so should pursue the same expeditiously if truly interested in protecting his rights. The consequence of this finding is that the application for reinstatement lacks merit and is dismissed with costs to the respondent. Curiously, even today as the court delivers this ruling the applicant and his advocate are not present.

**DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 14<sup>TH</sup> DAY OF JUNE, 2024**

**HON. T.A SITATI**

**SENIOR PRINCIPAL MAGISTRATE**

**GITHONGO LAW COURTS**

Present

No appearance for the applicant and his advocate

Ronny and Joan Court assistants.

